

## **9.03.00.00 - SERVICE OF SUMMONS, COMPLAINT, AND LIS PENDENS**

### **9.03.01.00    General**

The DDC-R/W is responsible for arranging service. The District shall proceed with service unless directed by the Regional Legal Office to wait for their instructions.

### **9.03.02.00    Time for Defendant to Answer**

After personal service has been made, the defendant has 30 days to appear.

### **9.03.03.00    Establishing Date of Value**

The District shall promptly serve all defendants in the condemnation action when it is apparent negotiations have reached an impasse. The date of value is the date the complaint is filed (commencement of the action) if the case is brought to trial within one year of the filing. To retain the date of value, extended delays should not be allowed.

If the case is not brought to trial within one year, the date of value is the date the trial begins. Except, if the delay is caused by the defendant, the date of value is the date the complaint is filed. A date of value is also established on the date when a deposit of probable compensation has been made.

### **9.03.04.00    Return of Summons**

A condemnation action shall be dismissed and no further proceedings taken if Summons and Complaint have not been served and returned into court within three years from the commencement of the action (CCP Sections 583.210 and 583.250). Local "fast track" rules may require return of summons within a short period of time, e.g. 60 days, after commencement of the action. Violation of these rules may result in sanctions, including dismissal of the action if lesser sanctions are ineffective. Therefore, return of summons or other proof of service must be made to the Legal office within 50 days so the documents can be filed with the court within 60 days. This requires the Right of Way Agent to check services of Summons, as shown by the condemnation record on any given action, sufficiently in advance of the expiration of the three-year period. This permits the service of any unserved defendants with whom settlement has not been made or who have not filed an answer or other appearance in the action.

As noted in Section 9.03.20.00, subsequent or additional Summons may be issued. However, an additional Summons does not extend the three-year period within which the Summons must be served.

In some cases it may be necessary to publish Summons, ordinarily for 30 days. Time is required to investigate and prepare papers to obtain an Order for Publication. The defendant is allowed an additional 30 days after publication to answer before a judgment can be entered. For these reasons, matters relating to service of Summons must be checked and final decisions made and implemented not later than two and one-half years (30 months) after the case has commenced.

### **9.03.05.00    Manner of Service**

The District should make every effort to make service by personally delivering a copy of the Summons, Complaint, and Lis Pendens to the defendant or to a person authorized to receive service of process. Making service by leaving and mailing copies may be used when personal service has been unsuccessful.

The four methods of service of the Summons, Complaint, and Lis Pendens are listed on the table entitled "Methods of Service" on the following page.

<b>METHODS OF SERVICE</b>	
<b>Personal Delivery</b>	A person may be served by personal delivery of a copy of the Summons, Complaint, and Lis Pendens to the individual or to a person authorized by the condemnee to receive service of process.
<b>Leaving and Mailing Copies</b>	<p>In lieu of personal delivery on a corporation, association, or public entity, service may be made by leaving a copy of the Summons and Complaint in the office of the person who was intended to be served with the person apparently in charge during the usual office hours. Thereafter, copies should be mailed by First Class Mail, postage prepaid, to the person who was intended to be served at the place where the Summons and Complaint were left.</p> <p>If a copy cannot be personally served upon an individual or a person authorized to receive service (or a minor or a conservator) with reasonable diligence, a copy may be left at such person's house or usual place of business. A competent member of the household or a person apparently in charge of the place of business who is at least 18 years of age must be present at the time the copy is left. The person must be informed of the contents of the Summons, Complaint, and Lis Pendens. Thereafter, a copy must be mailed by First Class Mail, postage prepaid, to the person intended to be served at the place where the copy was left. (See Form RW 9-13.)</p> <p>Substitute service of an individual or person authorized to receive service is not available for individual defendants unless personal service was first attempted. (Two or three attempts to personally serve the defendant at a "proper place" ordinarily qualifies as "reasonable diligence.")</p> <p>As pertains to husband (H) and wife (W), personal service on Spouse W is not deemed service on Spouse H unless Spouse H authorized Spouse W to accept service on his behalf. The authority is based upon an oral or written statement by Spouse H. Spouse W's saying she has authority to accept service on behalf of Spouse H is not sufficient. Similarly, service on a person's lawyer is not sufficient if that lawyer is not specifically authorized to accept service in the action.</p>
<b>Service by Mail</b>	<p>A copy of the Summons, Complaint, and Lis Pendens may be mailed by First Class Mail, postage prepaid, to the person to be served. A return envelope addressed to the sender, postage prepaid, two copies of a Notice and Acknowledgment of Service, and an unsigned copy of the Declaration of Mailing must be included. (See Forms RW 9-13, RW 9-14, and RW 9-16.)</p> <p>If the person to be served by mail fails to comply and return the acknowledgment within 20 days from the date of mailing, that person is liable for reasonable expenses incurred thereafter in serving or attempting to serve the individual by any other authorized method.</p>
<b>Service by Publication</b>	If service cannot be made by any other authorized manner after reasonable diligence, service may be made by publication. See Section 9.03.13.00.

**9.03.06.00 Service on Person Outside State**

Besides all the other authorized methods of service, a person located or residing outside the State may be served by sending a copy by First Class Mail and obtaining a return receipt. Service of a summons by this form of mail (certified or registered mail with

return receipt requested) is deemed complete on the tenth day after such mailing. (Code of Civil Procedure Section 415.40.)

**9.03.07.00**     **Service on Minors, Incompetents, and Trustees**

Although the following relates to making personal service on minors, incompetents, and trustees, the alternate methods of making service listed under Section 9.03.13.00 may also be used.

When service is made on a minor under the age of 18 but over the age of 12, a copy is delivered personally to the minor's mother, father, guardian, or, if no such person can be found with reasonable diligence, whatever person has care or control of the minor or resides with the minor. If the minor is under 12 years of age, service is made on the parent or guardian only.

Where service is made on a person who has been judicially declared incompetent and for whom a guardian or conservator has been appointed, service must be made personally on both the incompetent and the guardian or conservator. In certain situations the court can authorize dispensing with service on the incompetent for good cause.

When a named defendant is sued as a trustee and as an individual, service should be made in each capacity, i.e., one copy served on defendant as trustee and another copy served on defendant as an individual.

**9.03.08.00**     **Service on a Corporation**

Service on a domestic or foreign corporation is made by personally delivering a copy of the Summons, Complaint, and Lis Pendens to the president or other head of the corporation, vice president, secretary, assistant secretary, treasurer, assistant treasurer, general manager, or person designated for service of process or authorized to receive service of process. (See CCP Section 416.10, Corporation Code Section 1502.)

If service is to be made on a bank, the copy may be delivered to the above-enumerated officers, or agents thereof, or to a cashier or assistant cashier thereof.

CCP Section 412.30 requires that the copy of the Summons served on a corporation shall contain a notice stating in substance that the person served has been served on behalf of the corporation, which must be designated by name in the notice. An appropriate form of this notice has been incorporated in the Summons form under the title "Notice to the Person Served."

The summons itself must notify the person to whom it is delivered of the capacity in which he or she is being served or if he or she is being served on behalf of another. In an action against a corporation, partnership, or other unincorporated association, the summons form itself must notify the person to whom it is delivered that he or she is being served on behalf of a specific entity defendant (and also individually, if such is the case). It is not enough that the corporation or partnership is named as a defendant in the action. Nor is it sufficient that the process server tells the person served that he or she is being sued on behalf of the entity-defendant.

Consult with the Regional Legal Office for guidance in making proper service if a corporation has forfeited its charter or right to do business, has been dissolved, or is in bankruptcy.

**9.03.09.00**     **Service Where Appropriate Agent of Corporation Cannot Be Found**

If the agent designated for service of process cannot be found with reasonable diligence, if no person has been designated, or if none of the officers or agents of the corporation enumerated in Section 9.03.08.00 can be found, service can be made by personal delivery to the Secretary of State after the necessary court order is obtained. The Regional Legal Office will prepare the necessary papers and have the proper order made.

**9.03.10.00**     **Service on a Partnership or Unincorporated Association**

CCP Section 412.30 requires that the copy of the Summons that is served shall contain a notice stating, in substance, that the person served has been served on behalf of the partnership or unincorporated association, which must be designated by name in the notice. Service is to be performed as shown in the following table. If questions arise concerning service, consult with the Regional Legal Office for guidance.

PARTNERSHIPS OR UNINCORPORATED ASSOCIATIONS		
Type Of Association	Conditions	Service
General or Limited Partnership	Agent has been designated for acceptance of service of process with the office of the Secretary of State.	Serve the person so designated, a general partner, or the general manager of the partnership.
Not a General or Limited Partnership	Agent has been designated for acceptance of service of process with the office of the Secretary of State.	Serve that person, the president or other head of the association, vice president, secretary, assistant secretary, treasurer, assistant treasurer, or general manager.
Unincorporated Association	No person has been designated as agent for acceptance of service of process with the office of the Secretary of State or that person cannot be found at the address specified with the office of the Secretary of State and no person listed above can be found within the State after a diligent search.	Regional Legal Office must apply to the court for an order that service be made by delivering a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address.
Unincorporated Association	No officer or other person on whom Summons may be served can be found within the State.	Regional Legal Office must apply to the court for an order authorizing service to be made by publication of summons.

#### **9.03.11.00 Service on Public Agencies**

CCP Section 416.50 provides the following procedure for service on a public agency:

*"(a) A summons may be served on a public entity by delivering a copy of the summons, and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.*

*"(b) As used in this section 'public entity' includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state."*

The District should contact the public agency to determine who is authorized to accept service on behalf of the agency. Service on a public agency should include the Lis Pendens.

When another State agency has an interest, the Department's practice is to mail informational copies of Summons, Complaint, Lis Pendens and title report to that State agency and the Attorney General's office.

#### **9.03.12.00 Service on Tax Collecting Agencies**

It is not necessary to name a tax collecting agency in the complaint when its only interest is an *ad valorem* tax lien. However, a courtesy copy of the Summons and Complaint should be provided as notice for computation of the amount of tax to be paid out of the judgment. (See Section 9.02.08.00.) If prepaid taxes are involved, see Acquisition Section 8.04.24.00.

#### **9.03.13.00 Service by Publication**

The law authorizes service by publication in the following cases:

- Defendant cannot be located with reasonable diligence.
- No person who may be served on defendant's behalf can be located.
- The identity of the defendant is unknown, e.g., there are heirs or devisees, or all persons are named as defendants under CCP 1250.220.

(See Section 9.03.09.00 and CCP 415.50 and 1250.130.)

Publication is authorized under CCP Section 1250.125 even if the offer required by Government Code Section 7267.2 has not been made. This requirement is a prerequisite for securing a

Resolution of Necessity. (See CCP Section 1250.125(c) for a conditional exception.)

The Department's practice is to publish Summons against those defendants who cannot be located even though the property in question may be of low value.

An Order for Publication of Summons must be obtained from the court. The Order will designate the newspaper or other publication in which the Summons is to be published as well as the period of publication. When publication is ordered, personal service of a copy of the Summons and Complaint on a defendant out of the State is effective on deposit in the post office, mailed to defendant at defendant's last known address. A service is complete at the expiration of the time prescribed in the Order of Publication and the date of deposit in the post office.

To obtain an Order for Publication, a Declaration or Declarations must be filed with the court to support the Order. These Declarations are required to show the court that all available means of locating and serving the defendant have been exhausted. Facts must appear in the Declarations indicating a sincere desire and honest effort to locate the defendant.

The statutes provide that reasonable diligence must be exercised in order to obtain an Order for Publication of Summons. Reasonable diligence means more than a perfunctory search and requires more than a casual inquiry of one or two former neighbors or a letter written at random. It means that a systematic investigation and inquiry must be conducted in good faith.

Declarations must state the facts and not mere conclusions of law or fact. Hearsay is not acceptable, and the information should be recent. If the information is contained in a letter, the letter should be attached to the Declaration.

Statements relative to the last known address of a defendant will carry little weight unless the source of this knowledge is given. The Declaration should contain the names and addresses of all relatives, friends, or employers of the defendant interviewed and the dates of such interviews. It should contain information about the inquiries made at or around every place the defendant is known to have resided or been employed.

The Declaration must show a search of the latest city directory, telephone books, tax rolls, and register of voters was made, giving dates. In cases where a

name similar to the defendant's is found, the Declaration must show inquiry about the defendant at the address given and must set forth the information obtained by such inquiry. If a name similar to that of the defendant is not found, the declaration must so state. The names and addresses for all persons contacted and the actual statements made by each person, not the declarant's conclusion therefrom, should be noted.

The District should give the facts pertaining to the search for the defendant to the State's attorney, who will prepare the necessary Declaration to be made by the agent. It is important that the search be made within a reasonable time of the filing of the Declaration. If the information is stale, the court will refuse to make its Order for Publication.

The publication of the Summons should be commenced immediately after obtaining the Order. The Order will require the Summons and Complaint to be posted on the property within 10 days of the order. In instances where the last known address is given, the Order will provide for the mailing of a copy of the Summons and Complaint to defendant at the last known address. A Declaration of Mailing is necessary.

#### **9.03.14.00 Service by Publication—Unknown Defendants**

CCP Section 1250.220 provides for effecting service on "all persons unknown claiming any title or interest" and "the heirs and devisees of (naming such deceased claimant), deceased." Consult the Regional Legal Office for procedure. (See Section 9.03.13.00.)

#### **9.03.15.00 Service on Intervening Interest**

The recording of the Lis Pendens furnishes notice to all persons of the pendency of the action. Any person who may acquire an interest in the property subsequent to the institution of the proceeding is bound by the judgment made therein. It is the Department's practice, when feasible and practical, to serve Summons and Complaint upon such person or persons who purchase or obtain any interest in the property under condemnation. This is done primarily to avoid the possibility of any adverse claim.

#### **9.03.16.00 Service on Fictitious Defendants**

A person or a corporation not named in the Complaint as defendant can be served under the provisions in the Complaint naming a fictitious

defendant. If an interest is found that was not known at the time the suit was prepared, the person or corporation holding this interest can be served by designating such person or corporation by one of the fictitious names.

Service must be made on fictitious defendants in the manner in which they are named and sued in the Complaint. If Doe One to Doe Ten have been sued specifically as heirs of a deceased person, Doe Eleven to Doe Thirteen as trustees, and Jane Doe or John Doe as the unknown spouse of a listed defendant, these designations must be used when the true names are ascertained. In the event that a corporation is served as a “Doe,” the summons must notify the person served that he or she is being served on behalf of a specific corporation, and that the corporation is being served as a specific “Doe.”

The party making service on fictitiously named defendants must comply with CCP Section 474. The appropriate notice required is shown on the Summons under Notice to the Person Served. Reference to the appropriate type of service must be marked. If in the Complaint the numbers of the fictitious defendants are written (e.g., DOE ONE to DOE THIRTY), then the designation of the particular DOE NUMBER required in the above notice should also be written (e.g., DOE TWENTY, not DOE 20).

#### **9.03.17.00     Proof of Service - Named Defendants**

The District should send all Proofs of Service (Form RW 9-13) in duplicate to the Regional Legal Office immediately after service has been made. The Legal Office is responsible for filing all Proofs of Service with the Court.

The name of the month should be written out instead of using numerals representing the month. The specific address of service should be shown. The number of the parcels in which the various defendants have an interest should be shown only on the copy of the Proof of Service.

The name of the defendant must appear in the Proof exactly as it appears in the Complaint, unless this name is incorrect. If the party has been sued under an erroneous name, the party should be served as one of the fictitiously named Doe defendants and the appropriate proof of service made. (See Section 9.03.16.00.)

When a named defendant is sued as a trustee, this designation should appear wherever the name does. If such a defendant is sued both as a trustee and as an individual, the Proof should show service upon each, just as the name appears in the Complaint.

#### **9.03.18.00     Proof of Service—Domestic or Foreign Corporation, Partnership, or Unincorporated Association**

If notice of the capacity in which a person is served is required on the copy of the Summons, the Proof of Service must recite that such notice appeared on the copy of the Summons that was served, per CCP Section 417.10. (See Section 9.03.08.00.) Since the form of Proof of Service includes an appropriate statement, it is important to verify that this notice was appropriately marked on the copy of the Summons served when signing the Proof.

#### **9.03.19.00     Proof of Service—Fictitious Defendants**

The Proof of Service upon a fictitiously named defendant must comply with the provisions of CCP Section 474 before the default can be entered. (See Section 9.03.16.00.) The form of Proof of Service includes an appropriate statement of proper notice being given.

#### **9.03.20.00     Subsequent or Additional Summons**

If the Complaint has been filed, subsequent or additional Summons may be issued against any or all defendants on the request of the plaintiff. A plaintiff may secure the issuance of a Summons at any time up to the expiration of the three-year limitation on service and return of Summons. More than one Summons for a defendant may be outstanding at one time. No distinction is made between the original and subsequent or additional Summons.

If a Summons is lost after service has been made but before it is returned, its return is excused. CCP Section 417.30 provides that a declaration of the process server may be returned in lieu thereof. Consult the Regional Legal Office if it appears that an additional Summons may be necessary.

#### **9.03.21.00     Service Complete**

Personal service is complete at the time of delivery (CCP Section 415.10.) Substitute service is deemed complete on the tenth day after the mailing (CCP Section 415.20). Service by mail and acknowledgment of receipt is deemed complete on

the date the defendant signs the acknowledgment (CCP Section 415.30(c)).

**9.03.22.00**    **General Information**

As part of the “Notice to the Person Served,” there is a place on the bottom of the front page of the summons form for the server of the summons and complaint to insert the date on which the summons was served. The purpose of entering this date is to assist the defendant in determining the due date of his or her responsive pleading. However, failure to enter the date does not affect the validity of service. (See CCP Sections 415.10 and 412.20 (a).)

The person serving the summons and complaint should also obtain information that may later be needed to prove validity of service or to prove up a default. This information includes:

1. The full name of the person served, and, if such person is being served on behalf of a corporation or other entity, his or her office or capacity, and
2. If the defendant is in military service.

Federal law requires an affidavit or declaration that the defendant is not in military service before any default judgment can be rendered (Soldiers’ and Sailors’ Civil Relief Act, 50 U.S.C. Section 520). Since the acquisition agent is required to execute this portion of the request for entry of default, he or she may want to verify that the defendant is not in military service.

**NOTES:**